

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

CALVIN WARREN

Defendant

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CRIMINAL ACTION NUMBER

IN-11-04-1969

ID No. 1104015365

Submitted: January 31, 2012

Decided: March 23, 2012

MEMORANDUM OPINION

*Upon Motion of Defendant to Modify Sentence
or for Ineffective Assistance of Counsel - **DENIED***

HERLIHY, Judge

Defendant Calvin Warren pled guilty on June 28, 2011 to assault second degree and felony receiving stolen property (RSP). A pre-sentence investigation was ordered, and he was sentenced on September 16, 2011 to one year in jail on the assault charge, followed by probation, and two years in jail suspended for probation on the RSP charge.

On October 12, 2011, he filed for a reduction of sentence and in it also made a claim of ineffective assistance of counsel, thereby converting part of his motion into one for post-conviction relief, claiming counsel misled him about the plea agreement and the sentence he would get. After counsel filed an affidavit in reply to this contention, Warren clarified his claim to say that counsel “guaranteed” him a Level 4 and Level 3 sentence.¹ Counsel also said he had little, if any, recollection of this case but denies ever misleading the client.

Discussion

There is no procedural impediment to reviewing Warren’s claim. His conviction became final thirty days after his sentence when he did not appeal.²

When asserting he was either misled by counsel or that counsel guaranteed a certain sentence, Warren refers to the TIS Guilty Plea form. He says counsel checked the “Yes” box to indicate that he had been promised something outside the plea agreement. The

¹ Letter from Calvin D. Warren, defendant, to the Honorable Jerome O. Herlihy, Superior Court Of Delaware (Jan. 24, 2012)(in Prothonotary's file).

² *Jackson v. State*, 654 A.2d 829, 832 (Del. 1995).

promise or guarantee according to Warren, was that he would not get a jail sentence but would receive a sentence to “Level 4 or Level 3.”

The original TIS form which he signed, however, shows the “No” box was checked. Further, Warren candidly admits that, when asked at the time he took his plea, if were promised anything, he said, “No.” Absent clear and convincing evidence to the contrary, he is bound by these statements.³ Warren has presented no such evidence. Under these circumstances, there was no ineffective assistance of counsel.

Warren’s claim to that affect was contained in a motion to reduce his sentence. The Court has, in reviewing his claim against counsel, taken into account some of the points he offers for a sentence reduction. One is his age, eighteen when he committed these offenses and was sentenced. The other reason is his lack of “adult” criminal history.

Of course, there is no dispute about his age and the Court weighed that in examining his claim against his lawyer. But Warren also had failed to show appear previously in this Court in connection with his charges and was picked up on a *capias*. It is undisputed that these charges were and are Warren’s first “adult” charges. That is true as far as it goes. But he was out on bail on the RSP charge when he committed the assault charge which involved inflicting physical injury on a police officer trying to arrest him.

Further, however, he has an extensive record in Family Court for similar offenses. The Court, again in examining his claim against counsel considered Warren was implying

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

he was a neophyte in the criminal justice system. But his Family Court juvenile record made that claim hollow and showed his criminal conduct was barely interrupted by his eighteenth birthday. The pre-sentence officer viewed his future as “unfavorable.”

These matters are recited because of the partial overlap in the motion to reduce his sentence and the claim against his lawyer. The Court has separately considered Warren’s grounds for a reduction of sentence, but the other factors cited above and for reasons given when he was sentenced, the Court sees no reasons to modify his sentence.

Conclusion

For the reasons stated herein, Calvin Warren’s motion for postconviction relief and modification of sentence is **DENIED**.

IT IS SO ORDERED.

J.